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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 374 (JMF)

5 MICHAEL AVENATTI,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 February 25, 2020  
2:30 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

District Judge

12 APPEARANCES

13 GEOFFREY S. BERMAN

14 United States Attorney for the  
Southern District of New York

15 BY: MATTHEW D. PODOLSKY

ROBERT B. SOBELMAN

16 Assistant United States Attorneys

17 PIERCE BAINBRIDGE BECK PRICE & HECHT LLP

Attorneys for Defendant

18 BY: THOMAS D. WARREN

DANIEL DUBIN

19  
20 Also present: DELESSA PENLAND, Special Agent, USAO  
21  
22  
23  
24  
25

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MR. PODOLSKY: Good afternoon, your Honor. Matthew Podolsky and Robert Sobelman for the government. And with us at counsel table is Special Agent Delessa Penland of the United States Attorney's Office.

THE COURT: Good afternoon.

MR. WARREN: Good afternoon, your Honor. Tom Warren and Daniel Dubin of Pierce Bainbridge.

THE COURT: Good afternoon to you as well.

All right. Welcome. For those of you who don't know me, I am Jesse Furman, a United States district judge here in the Southern District of New York. This case has been reassigned to me due to the untimely and very sad death of my colleague, Judge Batts.

A couple of things I want to go over today, including just figuring out the trial situation, but the first order of business is just sorting out the counsel situation. I noticed in recent days that Mr. Steward filed a motion to withdraw and there was a notice of appearance filed by a Ms. Miro, neither of them are present today. So I am trying to figure out precisely who is representing the defendant and what the plans are on that front.

MR. WARREN: Mr. Dubin and I have neither filed a

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1 motion to withdraw nor a notice to appear. So we are counsel  
2 of record, and another of our colleagues is likely to join us,  
3 and we may have additional counsel as well, but at this point  
4 we are counsel of record and intend to proceed.

5 THE COURT: All right. In light of that, I guess I  
6 don't see any reason not to grant the motion to withdraw.  
7 Obviously, I wouldn't want to do that if it would affect the  
8 trial schedule, but you're telling me that you are on the case,  
9 and that won't be changed I take it.

10 MR. WARREN: That's correct, your Honor. And we have  
11 no objection to Mr. Steward's withdrawal.

12 THE COURT: What about Ms. Miro, what is her role?

13 MR. WARREN: My understanding is she is going to  
14 remain on the case, and we have no objection, obviously, to her  
15 joining the team.

16 THE COURT: But she is not here today?

17 MR. WARREN: That is correct, your Honor.

18 THE COURT: All right. Very good.

19 So I will grant the motion to withdraw. I think that  
20 Ms. Miro's notice of appearance was rejected by the clerk's  
21 office. So you may want to just make sure that she refiles  
22 that to ensure that that is properly attended to.

23 MR. WARREN: Yes, your Honor.

24 THE COURT: Let's talk about the trial date. At  
25 present it is set for April 21st. I know that Mr. Avenatti has

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1 another trial set in California, I think for some time in May,  
2 if I am not mistaken. So I take it that that April 21st date,  
3 as far as you all are concerned, is fairly inflexible. Is that  
4 a fair assumption?

5 MR. WARREN: Give or take a week or two, yes. We  
6 intend to go forward as quickly as possible.

7 THE COURT: Is it the case that you would expect that  
8 this case is going to trial at this stage? I don't know if  
9 recent events have affected the defendant's view.

10 MR. WARREN: Yes, your Honor. At this stage, we  
11 believe the case is going to trial.

12 THE COURT: Mr. Podolsky, anything on either of those  
13 fronts that you want to share?

14 MR. PODOLSKY: Well, with respect to the trial date,  
15 we are prepared to proceed as scheduled on April 21st. We  
16 don't see any reason to change the trial date at this point,  
17 provided that date is convenient for your Honor.

18 With respect to whether the trial will proceed, we are  
19 certainly intending to proceed to trial that day. Of course,  
20 there have been recent events and if anything changes on that  
21 front, we will notify the Court immediately, but we have been  
22 in touch with defense counsel and at this stage we do  
23 think -- we are beginning to prepare for trial, we will put it  
24 that way.

25 The one small request I would make with respect to the

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1 trial date, Judge Batts set it to start, I believe, on a  
2 Tuesday. We think it may be beneficial to start on a Monday,  
3 given our experience with jury selection in the defendant's  
4 last case, just to ensure we have a sufficient venire and can  
5 get through jury selection expeditiously. So it may make sense  
6 simply to move the trial to the 20th, I believe, instead of the  
7 21st, but we are certainly prepared to begin whenever is  
8 convenient to the Court.

9 THE COURT: And based on the transcripts that I have  
10 reviewed in the proceedings before Judge Batts, the government  
11 had estimated its case in chief would be about a week, and any  
12 defense case, if there were one, would be up to a week as well.  
13 I will confess that, having read the indictment, those  
14 estimates seem a little long to me, that is to say, I would  
15 think that this case can and should be tried more quickly than  
16 that, but what is your latest assessment on that front?

17 MR. PODOLSKY: Your Honor, in the ordinary course, I  
18 would absolutely agree with you. I will say, just based on our  
19 recent trial against the same defendant, this may be an  
20 entirely different case. We are before a new judge so I don't  
21 want to put too much weight on that. But I will say that  
22 cross-examinations were quite lengthy in that case, and if that  
23 translates to this case, I could see the government's case  
24 certainly being a week, or even a week and a half. But from  
25 our perspective, a typical case dealing with this subject

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1 matter, I agree, your Honor, I think a week would be more than  
2 sufficient.

3 The last thing I would note on that, it doesn't go  
4 directly to the government's case in chief, but just to return  
5 to jury selection for a moment, it did take about three days to  
6 select a jury in our last trial. We used a jury questionnaire,  
7 and I am not sure what your Honor intends to do with respect to  
8 that, but I just put that forward as we are thinking about  
9 scheduling.

10 THE COURT: I will have more to say on that in a  
11 moment.

12 Defense counsel on the trial point?

13 MR. WARREN: In terms of starting on Monday versus  
14 Tuesday, we are obviously fine with starting on the 20th as  
15 opposed to the 21st.

16 I would note that Mr. Avenatti has just recently been  
17 transferred out of the SHU into Gen-Pop, and for 30 days we had  
18 almost no access to him whatsoever. So as we begin to prepare  
19 for trial, we may come back to the Court and ask the Court's  
20 dispensation for another week or two, but at this point we  
21 wouldn't want to indulge the Court in that respect and  
22 certainly wouldn't be more than a week or two.

23 THE COURT: Let me say a couple of things.

24 First of all, when I set a trial date, it is pretty  
25 much a firm date, that is to say, you should assume it is a

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1 firm date. So I am not going to budget by a week or even two.

2 I am also concerned, if Mr. Avenatti has a trial  
3 date -- correct me if I am wrong, I feel like I read somewhere  
4 that the trial date in California is late May -- I would think  
5 that adjourning it a week or two would potentially encroach on  
6 that, and I would not want to do that to my colleague out in  
7 California.

8 MR. WARREN: We obviously don't want to bump up  
9 against that trial date either, your Honor.

10 THE COURT: I actually have another criminal trial  
11 scheduled to start on April 21st, but it's with a defendant who  
12 is not in custody, and for that reason I am inclined to  
13 prioritize this one. So I am going to stick with the trial  
14 date that Judge Batts set.

15 We will revisit the Monday versus Tuesday issue in a  
16 moment because my plans with respect to jury selection and a  
17 jury questionnaire, I do have some thoughts on that that I will  
18 share in a moment and that may have some bearing on how we  
19 proceed on that front.

20 I will review the trial schedule in more detail at the  
21 final pretrial conference, but you should all be aware, if  
22 you're not already, that I generally sit for a truncated trial  
23 day, that is, follow the practice of some judges in this  
24 courthouse in sitting, after jury selection, from approximately  
25 9 in the morning, or really promptly at 9 in the morning, until

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1 2:30 in the afternoon, with one and only one half-hour break in  
2 the middle of the day. Again, that doesn't start until after  
3 jury selection, but that is my practice thereafter so you  
4 should be aware of that. And I do sit all five days of the  
5 week.

6 Now, let's talk about pretrial deadlines and  
7 procedures. My practices are a little bit different than Judge  
8 Batts' were, and in that regard, I would ask you to make sure  
9 that you look at my individual rules and practices for criminal  
10 cases and for trials, both of which are available on the  
11 court's website.

12 I will be revising the pretrial deadlines a little  
13 bit, and unlike Judge Batts, I do have both sides submit  
14 requests to charge and proposed voir dire, etc. simultaneously.  
15 So I will be setting those deadlines and procedures anew.

16 I do want to start with the question of jury selection  
17 and a jury questionnaire though. I know that the defendant had  
18 previously filed a motion for a jury questionnaire, which was  
19 then withdrawn based, as I understand it, on discussions with  
20 the government that the matter could be addressed more closely  
21 to trial. Having said that, I am inclined to address it now  
22 because we are approaching trial.

23 In general, I am not a huge fan of jury questionnaires  
24 because I think they can cause delay, but I think given the  
25 identities and histories of the defendant and the victim in



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1 this case, I do think that this is an appropriate case for a  
2 jury questionnaire and will probably serve to make jury  
3 selection more efficient and fair. I don't know if either of  
4 you disagrees or if you agree with that.

5 Mr. Podolsky.

6 MR. PODOLSKY: Your Honor, we are inclined to follow  
7 whatever procedure the Court prefers. We did use one in the  
8 last trial. It seemed to provide some advantages  
9 efficiency-wise. And we would be happy to confer with the  
10 defense as to a proposed questionnaire, if your Honor is  
11 inclined to use one.

12 MR. WARREN: Yes, your Honor. Given the nature of the  
13 defendant in this case, we believe a questionnaire is  
14 appropriate, as it was in the prior trial.

15 THE COURT: All right. So we will use a  
16 questionnaire. What I will ask you to do is to confer with one  
17 another in an effort to reach agreement on a proposal. I want  
18 to do this sooner rather than later, so by March 13 you should  
19 submit either an agreed upon questionnaire, or to the extent  
20 that you disagree over anything, you can submit competing  
21 proposals. I want a redline from the government indicating  
22 what the differences are between the two, and simultaneously  
23 you should file or submit by e-mail to chambers Word versions  
24 of your expected proposals just so we have those as well.

25 Now, in my view, the questionnaire, and I did look at

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1 the one that Judge Gardephe used, I would propose potentially  
2 to go a little bit beyond what he did to make jury selection  
3 run more smoothly in my view.

4 First of all, I would propose to include background  
5 questions with respect to the jurors -- occupation, what they  
6 like to read, where they get their news -- those sorts of  
7 questions that I would ordinarily ask in jury selections,  
8 because I think if you have them in advance, we don't need to  
9 go through them individually.

10 Second, hardship questions. I don't expect this to be  
11 a particularly long trial, but we may as well ask those  
12 questions. And then ask, most importantly, questions about  
13 knowledge or opinions of the defendant, the victim, and the  
14 case generally.

15 I haven't used a questionnaire in a criminal case as a  
16 judge, but I did use questionnaires in the trials that I have  
17 done in the *General Motors Ignition Switch Litigation*, so you  
18 may want to look at the questionnaire that I used in that case.  
19 One example is -- and this is in docket 14 MD 2543 -- if you  
20 look at docket number 4116, I docketed one of the  
21 questionnaires that I used in that case, and that may be  
22 helpful to you as a template as you discuss and submit your  
23 proposals.

24 If it would be helpful to you, I am sure that  
25 somewhere on our network we have a Word version of that

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1 questionnaire. So if you want to get in touch with my staff, I  
2 am sure we can provide that to you if that would be helpful as  
3 you develop your own proposals, but again, docket number 4116  
4 in 14 MD 2543.

5 By the same date, I don't know what happened in Mr.  
6 Avenatti's last trial on this front, but I do want to give some  
7 thought to whether or to what extent the questionnaires would  
8 be made public or available to the press, in the event that  
9 there was interest in that. So what I am going to ask you to  
10 do is by that same deadline -- namely, March 13 -- I would like  
11 both sides to submit a letter brief addressing that issue,  
12 namely, whether and to what extent and when the completed  
13 questionnaires would be made available to the press. I have no  
14 problem and do intend to make the blank questionnaire available  
15 publicly. I don't see any reason not to do that. But my  
16 question is whether the prospective jurors' answers should be  
17 made available. Again, I think there is a timing question and  
18 an extent to which it should be made available.

19 More broadly, I would ask you to address your views on  
20 the procedures to be used in connection with jury selection  
21 vis-a-vis press and public access. Again, I don't know what  
22 happened before Judge Gardephe, but you can give me your  
23 thoughts with respect to the procedures we should follow on  
24 that score. Obviously, with respect to sidebars and the like,  
25 I would be curious to get your thoughts and give those some

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1 thought in advance.

2 I would in that regard draw your attention, there are  
3 at least a few cases that I have found that discuss those  
4 issues: *United States v. King*, the Don King case, that's 140  
5 F.3d 76; *ABC, Inc. v. Stewart*, the Martha Stewart case, 360  
6 F.3d 90; *United States v. Pirk*, 284 F.Supp.3d 445; *United*  
7 *States v. Loera*, the El Chapo case, 2018 WL 5624143; *United*  
8 *States v. Shkreli*, 260 F.Supp.3d 257; and the *Joseph Bruno*  
9 case, 700 F.Supp.2d 175.

10 So you may want to look at those cases. And I would  
11 invite any responses to your submissions, in the event that  
12 there are members of the press, for instance, who wish to be  
13 heard on this, within a week of your submission. So by March  
14 20th so that I can give that some thought as to how to approach  
15 those issues here.

16 Any questions on that front?

17 MR. PODOLSKY: No, your Honor.

18 MR. WARREN: No, your Honor.

19 THE COURT: Great.

20 I should say, beyond that invitation for submissions  
21 from members of the public, or press for that matter, in  
22 general, press inquiries, just for those who are present here  
23 who read this transcript, should not be made directly to my  
24 chambers. I don't expect the press to be calling or contacting  
25 my chambers. Those inquires should go to the District

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1 Executive's office in the normal course.

2 All right. With respect to procedures of jury  
3 selection and the questionnaire, what I propose to do is the  
4 following. Based on my experience in the *General Motors* cases  
5 and my discussions with the jury department, would be to have  
6 prospective jurors complete the questionnaires on the morning  
7 of Wednesday, April 15, so the Wednesday prior to trial. And  
8 then have the parties review the questionnaires, and by 10 a.m.  
9 on Friday the 17th, submit a list of jurors that both sides  
10 agree should be struck for cause, whether because of hardship  
11 or knowledge or opinions of the case or what have you. And  
12 those jurors would be excused without further review from me; I  
13 wouldn't even look at their questionnaires. And by the same  
14 time, a list from each side of whatever jurors that you believe  
15 should be struck for cause that the other side does not agree  
16 with, and whatever explanation or argument you want to make  
17 with respect to those. I would then review those and make a  
18 decision about whether any should be struck for cause on the  
19 papers, so to speak. And anyone who is not struck in that  
20 manner -- that is, who is not flagged by you and/or I  
21 disagree -- would be brought here on the first day of trial for  
22 further inquiry in jury selection.

23 Any questions about that?

24 MR. PODOLSKY: No, your Honor.

25 MR. WARREN: No, your Honor.

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1 THE COURT: There is one catch with respect to that  
2 April 15 date, which is it is a religious holiday so I will not  
3 be here, and, indeed, won't even be available. My view is that  
4 that part of the process can be conducted without a judicial  
5 officer by the jury department. So long as the questionnaire  
6 is clear on its own terms, I think the jury department can  
7 provide relevant instructions and handle that part of the  
8 process. If you disagree, number one, we can potentially try  
9 to change the schedule, but that may be complicated. The  
10 second option would be for me to enlist a judicial officer,  
11 perhaps a magistrate judge, to preside over that part of the  
12 process, but I don't know if you have any thoughts about that.

13 MR. PODOLSKY: Certainly not as far as your presence,  
14 your Honor. I suppose it does just raise the question of  
15 whether there are potential jurors for whom the schedule will  
16 pose a problem, which would maybe militate in favor of a  
17 different date for the juror's sake. But certainly from your  
18 Honor's perspective, I am not aware of any reason you have to  
19 be present for them to receive and fill out the questionnaires.

20 THE COURT: Defense counsel.

21 MR. WARREN: I would concur with that.

22 THE COURT: I will talk to the jury department to  
23 figure out if there are other options, but I think the answer  
24 is going to be no, just because of the number of jurors that  
25 need to be called and other proceedings that jurors are needed

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1 for on other days and so forth, I have already had this  
2 conversation with them and I think there is relatively limited  
3 flexibility. I don't think there are a whole lot of jurors who  
4 would be impacted by that being a religious holiday, and I am  
5 one of the few judges who is impacted by it, but I think it is  
6 what it is.

7 I guess that returns us to the first trial date  
8 question. My understanding is, in the Judge Gardephe case,  
9 that that process began on the first day of trial, that is, the  
10 questionnaire was filled out on the first day of trial, which  
11 may explain why that process took as long as it did. So I  
12 guess my question is, given what I just described, do you have  
13 a view on whether we start Monday or Tuesday?

14 MR. PODOLSKY: First of all, you're correct, we spent  
15 the first day of trial dealing with the questionnaires, and  
16 then the selection process took about a day and a half or so,  
17 maybe a little bit more. So with that in mind, we don't have a  
18 preference as to whether we actually start on Monday with the  
19 jurors who are being voir dired or Tuesday. We defer to the  
20 Court on that.

21 THE COURT: In light of that, I am going to leave the  
22 Tuesday start date as is. Particularly given the holiday of  
23 the week before, that gives us Monday to work things out, if  
24 need be, and I will have more to say on that in a moment.

25 I will, by the way, issue an order memorializing these

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1 dates and setting forth some more particular instructions.  
2 Among other things, I am going to task the government with  
3 taking responsibility for copying the questionnaires and making  
4 them available in electronic fashion to the defense and to me,  
5 my chambers, because I won't be there that day, as you know.  
6 Again, I will spell all this out in an order. So that's how we  
7 will proceed generally.

8           Beyond that, let me give you some other pretrial  
9 deadlines. Any proposed voir dire beyond the questionnaire,  
10 any proposed jury selection instructions and proposed verdict  
11 forms, as well as any motions in limine by either side, shall  
12 be filed by March 25, again, that's March 25. I know that's a  
13 few days before the deadline that Judge Batts had given you,  
14 but I think it makes sense for any number of reasons. Any  
15 opposition to a motion in limine would be due by April 1st at  
16 noon. Again, initial filings by March 25, any opposition to a  
17 motion in limine by April 1st at noon.

18           I am going to set a final pretrial conference. It's a  
19 little complicated because of the Jewish holiday, and for that  
20 reason, I am going to actually give you two dates to hold, with  
21 the possibility that we will have two conferences, or,  
22 alternatively, once I see what, if anything, is filed  
23 on -- some things will be filed -- when I see what is filed on  
24 March 25, that may have some bearing on whether there is a need  
25 for both conferences or some bearing on whether to do it sooner



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1 rather than later.

2 So to that end, I will set two dates. One on April  
3 7th at 10 a.m., and then one on April 20th, that is the day  
4 before trial, at 10 a.m. as well. Again, I think odds are I  
5 will end up canceling one and having only one final pretrial  
6 conference, but I will wait and see what is filed on March 25th  
7 to make that determination, and issue an order in the event  
8 that we don't need to appear on both dates. Again, I will set  
9 that forth in a forthcoming order.

10 I will also say this, and my deputy, Ms. Smallman,  
11 will correct me if this is wrong. The April 7th date, if it  
12 occurs, will be in this courtroom. The April 20th conference,  
13 if it occurs on that date, would be in the courtroom where  
14 trial will be held, which will be courtroom 110, which is on  
15 the first floor of the courthouse, which is a larger courtroom  
16 than this.

17 As I have said a couple of times, I will issue an  
18 order with all these dates and some further details, which you  
19 should review with care. I would also again ask you to review  
20 my individual rules and practices for both criminal cases and  
21 trials. Among other things, that also describes the method of  
22 jury selection, which is the struck panel method.

23 Anything else?

24 MR. PODOLSKY: Your Honor, Judge Batts excluded time  
25 through April 21st, so I don't believe we have any applications

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1 with respect to that at this time. Nothing else from the  
2 government.

3 THE COURT: All right. Anything else for the defense?

4 MR. WARREN: Yes, your Honor, some discovery-related  
5 materials.

6 Mr. Avenatti had been promised a laptop with a copy of  
7 the discovery on it, and he has not been provided that yet. He  
8 has had no access to his discovery in this case. So I would  
9 like to raise that with the Court and see if we can have that  
10 worked out.

11 We also need a confirmation from the government that  
12 the discovery in this case is complete. And I guess I, as an  
13 attorney who typically practices in the Central District of  
14 California, I am not familiar with when Jencks material is  
15 produced, and so I have a question about that as well.

16 THE COURT: All right. Well, in answer to the last  
17 question, the general practice in this district is for the  
18 government to produce Jencks Act material by the Friday before  
19 trial. That's sort of the norm, and there are cases that  
20 deviate from that, but I don't know if this is a case that  
21 would warrant that. I also have limited authority to order the  
22 government to disclose Jencks Act material earlier than the  
23 statute requires.

24 Mr. Podolsky, do you want to address that?

25 MR. PODOLSKY: Yes, your Honor. We had intended after

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1 today's conference and dates were set to confer with the  
2 defense to agree upon a comprehensive schedule for pretrial  
3 disclosures, including 3500. We were able to reach such an  
4 agreement with the defendant's counsel in the last case and it  
5 worked effectively. So we will certainly confer with defense  
6 counsel about dates for all of our disclosures, including any  
7 expert disclosure and 3500 material as well.

8 THE COURT: Do you expect expert disclosure? I  
9 wouldn't necessarily think that is appropriate here.

10 MR. PODOLSKY: I don't know, your Honor. It's a topic  
11 that we certainly haven't conferred with defense counsel about.  
12 We are conferring internally. It's not something that I think  
13 is necessarily likely, but we want to just make sure that we  
14 give appropriate disclosure in case there is. That's all.

15 THE COURT: So why don't you guys talk to one another  
16 and try to reach agreement. I would think in either case you  
17 should submit a letter to me, hopefully with agreed upon dates  
18 that I could adopt. And if there is any disagreement, you can  
19 let me know, and again, assuming I have authority to do so, I  
20 will tell you what we are going to do.

21 The other two issues, Mr. Podolsky. First, I would  
22 hope and assume that discovery has been complete. Obviously,  
23 as you get closer to trial, you may come into possession of new  
24 materials, and I would imagine you understand your obligations  
25 are continuing in nature and would produce those promptly, but

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1 can you just confirm that discovery is complete?

2 MR. PODOLSKY: That's exactly right, your Honor. We  
3 have disclosed and produced all of the discovery we have to  
4 date, including material that was generated in the run-up to  
5 the last trial. All of that has been produced to defense  
6 counsel. I know there has been some change with respect to the  
7 defendant's counsel. We have already been in touch with them  
8 to make sure they have all the discovery. To the extent we  
9 come upon additional discovery as we continue to investigate  
10 and prepare for trial, we will certainly produce that promptly,  
11 as we did in the last trial. But as of today, we have  
12 completed discovery of the materials, certainly Rule 16  
13 materials that we have in our possession.

14 THE COURT: All right.

15 Then I don't know what the reference to a laptop was,  
16 who made that promise or what the story is on that front, but  
17 can you tell me what the story is?

18 MR. PODOLSKY: Sure, your Honor. As Mr. Warren  
19 referenced earlier, the defendant was being kept in, as I  
20 understand it, conditions that had limited access to the prison  
21 library and other resources. We had worked with his prior  
22 counsel to do whatever the government could to assist his  
23 preparation for the last trial. The defendant's move to  
24 general population, that we understand was effected, I believe,  
25 last week, changes what he is allowed to keep with him in his

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1 cell. So we will confer with defense counsel and make sure  
2 that he has access to discovery the same way any other person  
3 at MCC is. Our understanding, and I think this is the reason  
4 defense counsel is raising it, is that he is not allowed to  
5 have a laptop in his cell in general population. With that  
6 said, as you know, many defendants awaiting trial are at the  
7 MCC, and we will provide discovery just as we do with other  
8 defendants who are at the MCC.

9 THE COURT: All right. Great. Why don't you guys  
10 discuss this and see if you can sort it out.

11 I don't think the defendant is entitled to any special  
12 privileges, that is to say, he should get whatever access a  
13 defendant at the MCC gets in any case. But that being said, it  
14 is important to me that the defendant is able to review and  
15 access the materials in connection with his case to ensure that  
16 he can work with counsel to prepare for trial, and in that  
17 regard he is no different than any other defendant as well. So  
18 I have no doubt that you guys can work this out and figure out  
19 some way to ensure that Mr. Avenatti has appropriate access.  
20 And if you have any applications on that front, Mr. Warren, you  
21 should bring them to my attention sooner rather than later, but  
22 again, my hope is that you can sort that out with each other  
23 and with the MCC.

24 All right. Anything else?

25 MR. WARREN: Your Honor, with respect to discovery,

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1 and I appreciate the government's representation with respect  
2 to the completion of discovery, I would just point out, and  
3 obviously your Honor knows, the complaining witness in this  
4 case, the government's primary witness, has represented  
5 publicly that there are 472 text messages between her and Mr.  
6 Avenatti that relate to the book deal that is at the center of  
7 this case. We don't have them. So while I appreciate the  
8 government's representation, there are certain things that have  
9 been represented that exist that we don't have.

10 THE COURT: Well, I have reviewed the transcript of  
11 the proceedings before Judge Batts. I know this was previously  
12 aired and the government made the representation that it has  
13 turned over all texts that it has certainly. I have no reason  
14 to doubt that representation and obviously trust and assume  
15 that the government knows its obligations on that front. So I  
16 don't think that warrants further discussion, but I certainly  
17 would want to make sure the government understands its  
18 obligations.

19 MR. PODOLSKY: We do, your Honor. The only thing I  
20 will add to that, and I believe it was aired at the last  
21 conference, as your Honor referenced, I am frankly, just as we  
22 were last time, confused by the insistence about these hundreds  
23 of text messages. We have handed over the entirety of the text  
24 message exchange between the victim in this case and the  
25 defendant. It includes many hundreds of text messages,

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1 including text messages about the book deal, far more than 472  
2 or whatever number defense counsel just represented. So we  
3 have handed over those text messages; they do reference the  
4 subject matter in this case, and the defense has them. And we  
5 certainly handed over all the discovery that we have to date.

6 THE COURT: For what it is worth, on October 8th,  
7 there seemed to be 672. So I don't know what the number is,  
8 but I trust that the government has turned over everything and  
9 understands its obligations.

10 The last thing is just to emphasize again that that  
11 April 21st date is a firm date; it's not going to change. So  
12 everybody should be aware of that and proceed accordingly. You  
13 know how to find me in the event that there are any issues. I  
14 gave you the relevant deadlines that I will memorialize in an  
15 order. And unless there is anything else, I think we are done  
16 with our business today.

17 So with that, we are adjourned. Thank you very much.

18 (Adjourned)